amo REPORT

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RECOMMENDATIONS ON THE PAY EQUITY ACT

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
APRIL 1987

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ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario, a non-partisan voluntary organization, is united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total intergovernmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some six hundred (600) municipal governments throughout Ontario. The governing body is composed of some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

The following sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

Association Sections:

* County and Regional Section
* Large Urban Section
* Northern Ontario Section (FONOM/NOMA)
* Rural (ROMA) Section
* Organization of Small Urban Municipalities Section

Association Affiliates:

* Association of Municipal Clerks and Treasurers of Ontario
* Association of Municipal Tax Collectors of Ontario
* Municipal Engineers Association
* Ontario Municipal Administrators Association
* Ontario Municipal Personnel Association
* Ontario Municipal Social Services Association
* Society of Directors of Municipal Recreation of Ontario
* Urban Finance Officers Association of Ontario

To the Municipal Clerk:

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SUMMARY OF RECOMMENDATIONS

1. That Part (b) of the Schedule accompanying the legislation and affecting the definition of "establishment" make clear that any authority, board, agency, or commission in a municipality that is separately incorporated or is designated as a separate entity under any Act or Acts shall be deemed to be a separate establishment.

2. That the definition of "job class" be clarified as follows:

   "job class" means a grade, rank, level or group of positions in an establishment that have similar job qualifications, are filled by similar recruiting procedures and have their compensation determined by the same rate, range of salary or salary schedule, as the case may be.

3. That the legislation be structured for municipal employers similar to private sector employers such that:

   a) very small municipalities with fewer than 10 employees would be exempt from the Act,

   b) small municipalities would be given the option of developing pay equity plans but would be required to make mandatory wage adjustments, and

   c) large municipalities be given at least as much time as large private sector employers to develop and implement pay equity plans.

4. That subsection 6(2) be amended to read: "No employer or bargaining agent shall bargain for or agree to compensation practices and no arbitrator or board of arbitration duly appointed or established under any Act shall award a provision that, if adopted, would cause a contravention of subsection (1)."

5. i) That subsection 7(1) be amended to include "demotion pay procedures that do not discriminate on the basis of gender"; and

ii) That subsection 7(2) be amended to read: "This Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength or is the result of an arbitration process."

6. That subsection 5(1) and other relevant sections of the Act be amended to replace the words "or comparable value" with "or nearly equal value".

7. That subsections 13(4) and 13(5) be amended and made similar to the provisions of 14(4) and 14(8) to provide for a review period after the mandatory posting date of the pay equity plan.

8. That a new section be added to the legislation stating that the negotiation of a pay equity plan shall not impinge upon the employer's right to classify or not classify jobs.

REPORT ON BILL 154
An Act to Provide for Pay Equity in
the Broader Public Sector and the Private Sector

INTRODUCTION

The Association of Municipalities of Ontario continues to share the government's commitment to attain pay equity as part of its larger program for employment equity in the workplace.

However, within this context, AMO believes that where there are two alternative means of achieving pay equity, both of which are likely to attain the same result, the one posing fewer administrative problems and costs for the sector under consideration is the one that will work best.

Given this, AMO has and continues to support the notion that pay equity for the broader public sector should be under separate legislation and not be part of the legislation intended for the provincial public service (Bill 105). This latter legislation was designed to fit the needs and structure of the provincial public service - not the broader public sector.

AMO is pleased with the government's introduction of Bill 154 to the extent that it constitutes separate legislation and is pleased to see that a significant number of recommendations that AMO had made to the Consultation Panel on Pay Equity have been considered in this legislation.

There still remain, however, some technical aspects of the Bill that AMO feels need to be amended. To this end, AMO is pleased to submit its recommendations for amendments to Bill 154, An Act to Provide for Pay Equity in the Broader Public Sector and in the Private Sector.

RECOMMENDATIONS FOR AMENDMENTS TO BILL 154

Definition of Establishment

AMO Recommendation 1:

> **That Part (b) of the Schedule accompanying the legislation and affecting the definition of "establishment" make clear that any authority, board, agency, or commission in a municipality that is separately incorporated or is designated as a separate entity under any Act or Acts shall be deemed to be a separate establishment.**

Rationale:

Part (b) of the Schedule now reads:

> "the corporation of every municipality in Ontario, every local board as defined by the Municipal Affairs Act, and every authority, board, commission, corporation, office or organization of persons whose members or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Ontario."

It is unclear from Part (b) of the Schedule as to whether authorities, boards, commissions or agencies are to be regarded as separate establishments. Indeed, there are a myriad of situations in municipalities whereby some authorities, boards, agencies and commissions are regarded as part of the municipality's workforce; others need receive only budgetary approval and still others are completely devoid of any municipal authority. In the latter two situations, the municipal corporation exercises no authority with respect to labour relations or the personnel function of the authority, board, agency or commission. As such, it would be inappropriate to regard these groups as part of the municipal establishment responsible for pay equity. For more information refer to the Addendum, page 21 of this report.

Definition of Job Class

AMO Recommendation 2:

> **That the definition of "job class" be clarified as follows:**
>
> **"job class" means a grade, rank, level or group of positions in an establishment that have similar job qualifications, are filled by similar recruiting procedures and have their compensation determined by the same rate, range of salary or salary schedule, as the case may be.**

Rationale:

The definition of "job class" now reads:

> "job class" means those positions in an establishment that have similar duties and responsibilities and require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule.

It is not clear whether the current definition refers to a single job, a group of jobs at one level or a grouping of job levels. For example, where there are five successive levels of clerks (i.e., Clerk 1 to Clerk 5), does the job class consist of all clerk levels in combination or a particular clerk level? Indeed, the definition of job rate and the procedures for evaluating jobs and adjusting job rates seem to imply that job class refers to each level. If so, then the language recommended above or language similar to it should clarify the definition.

Structuring and Staging

AMO Recommendation 3:

> **That the legislation be structured for municipal employers similar to private sector employers such that:**

a) very small municipalities with fewer than 10 employees would be exempt from the Act,

b) small municipalities would be given the option of developing pay equity plans but would be required to make mandatory wage adjustments, and

c) large municipalities be given at least as much time as large private sector employers to develop and implement pay equity plans.

Rationale:

AMO notes that with regard to the private sector:

a) establishments with fewer than 10 employees are exempt from the Act [Subsection 2(1)(b)];

b) depending upon the number of employees they employ, employers are given different anniversary dates on which to begin adjustments; and

c) employers with more than nine employees but fewer than 100 employees can voluntarily develop formal pay equity plans, but must make mandatory wage adjustments.

By contrast:

a) all municipalities are to be covered under the legislation;

b) all municipalities, regardless of the number of employees they employ, must make adjustments beginning on the first anniversary after the date of proclamation of the legislation; and

c) all municipalities, regardless of the number of employees they employ, must develop formal pay equity plans in addition to making mandatory adjustments.

Plan Development

Compelling small municipalities with only a few employees to develop sophisticated pay equity plans is neither practical nor realistic.

Many of the definitions related to gender pre-dominance used in the development of a pay equity plan would lose their meaning. In a small municipality with 10 or 15 employees each job class is unlikely to contain more than 1 or 2 incumbents, making the concept of gender predominance meaningless.

In addition, the administrative cost of undertaking the development of a pay equity plan may be excessive for small municipalities since outside consultants would, in many instances, be required. Even though the legislation requires only the use of a comparison system and not necessarily a job evaluation system, the requirement for gender neutrality and the possibility of appealing a pay equity plan, necessitate a quantified system or an "expertly" ranked system. Such systems are not likely to be developed "in-house", particularly by small municipalities which lack expertise in these areas. Furthermore, since it will likely be some time before the Pay Equity Commission develops the required expertise to properly educate and train these employers on various methods of evaluation, a conflict exists between a small municipality's ability to evaluate jobs and the requirement to implement pay equity. In effect, a small municipality will be forced to hire expertise, the costs of which, relative to a small municipality's budget, will be considerable and may in fact exceed placing the plan into effect. AMO does not see this as an effective use of scarce resources.

AMO believes that a more viable alternative is to carry out pay equity in the manner stipulated for the private sector whereby municipalities, depending upon their workforce size, would be given the option of developing pay equity plans coupled with a complaint-based mechanism and mandatory wage adjustments.

Timetable for Implementation

Turning to a different area, it is not readily clear why the effective dates for plan development and adjustments are staged for the private sector and not for municipalities and, in particular, why "all" municipalities (large and small alike) must develop plans and make adjustments within one and two years, respectively, from the dates of proclama-

tion. Large private sector firms are given two and three years respectively, and small private sector firms are given five and six years respectively.

While funding relationships may have been a consideration in this decision, AMO believes that this should not be a significant criterion regarding the extent or pace of permissable staging. Indeed, like private sector firms, municipalities must both contend with the impact of pay equity on the sources and allocation of financial and human resources, and with the logistics of developing and implementing a new initiative of the magnitude and significance of pay equity. While this should not be interpreted as a reason to delay implementation of pay equity, AMO is of the view that municipalities should be granted a reasonable amount of time in which to do the job well if, in fact, the desired objectives of pay equity are to be met.

Related to the matter of staging pay equity, it would seem reasonable to suppose that the larger the organization, the greater the lead time required to develop pay equity plans due to the greater number of jobs to be evaluated. However, the reverse is proposed in the legislation. Presumably, the reason for this is that larger organizations are likely to already have job evaluation in place. Therefore implementation of pay equity would likely be more rapid with these employers and their experiences would then "trickle down" to smaller employers. While relative to small municipalities, there are more large municipalities that do have job evaluation systems in place, AMO's 1985 survey of job evaluation practices shows that only a small percentage of municipalities (less than 20% of 333 respondents), large and small, have a system in place. Therefore, with respect to staging, AMO believes that the short lead time afforded to municipalities, even as compared to large private sector firms, may prejudice the achievement of the legislation's intent. Large municipalities will be placed under a significant time pressure by compelling them to evaluate large volumes of jobs and to contend with the rigors of the collective bargaining process related to the development of bargaining unit pay equity plans in only half as much time as is given to large private sector firms.

Pay Equity and Collective Bargaining

AMO Recommendation 4

That subsection 6(2) be amended to read: "No employer or bargaining agent shall bargain for or agree to compensation

practices and no arbitrator or board of arbitration duly appointed or established under any Act shall award a provision that, if adopted, would cause a contravention of subsection (1)."

Rationale:

Subsection 6(1) and 6(2) now read:

(1) Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer.

(2) No employer or bargaining agent shall bargain for or agree to compensation practices that, if adopted, would cause a contravention of subsection (1).

The present wording of subsection 6(2) does not account for situations where an arbitrator or board of arbitration may award a provision that would prevent an employer from establishing or maintaining compensation practices that provide for pay equity. Under the present provision, an employer could be held responsible for contravening the Act as a result of action taken by a third party. To the extent that arbitration is a component of the collective bargaining process for a number of jurisdictions in Ontario, wording such as that proposed would ensure that the normal bargaining process in its entirety does not interfere with an employer's ability to meet its responsibilities to provide pay equity.

Allowable Exceptions

AMO Recommendation 5

i) **That subsection 7(1) be amended to include "demotion pay procedures that do not discriminate on the basis of gender"; and**

ii) **That subsection 7(2) be amended to read: "This Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength or is the result of an arbitration process."**

Rationale:

Subsections 7(1) and 7(2) now read:

(1) This Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of,

a) a formal seniority system that does not discriminate on the basis of gender;

b) a temporary employee training or development assignment that is equally available to male and female employees and that leads to career advancement for those involved in the program;

c) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of gender;

d) the personnel practice known as red-circling, where, based on a gender-neutral re-evaluation process, the value of a position has been down-graded and the compensation of the incumbent employee has been frozen or his or her increases in compensation have been curtailed until the compensation for the down-graded position is equivalent to or greater than the compensation payable to the incumbent; or

e) a skills shortage that is causing a temporary inflation in compensation because the employer is encountering difficulties in recruiting employees with the requisite skills for positions in the job class.

(2) a skills shortage that is causing a temporary inflation in compensation because the employer is encountering difficulties in recruiting employees with the requisite skills for positions in the job class.

With respect to subsection 7(1), an allowable exception is provided where an employee receives additional compensation as a result of pro-

motion or a positive performance rating. This, however, must be balanced by situations where an employee may have his/her compensation reduced or held constant as a result of demotion procedures. If not permitted, situations could develop where an employee's compensation is reduced because of, for example, continued unsatisfactory performance or discipline but then returned to the employee under the provisions of the Act.

Provided that such procedures are undertaken in a gender-neutral fashion, such an exception should be permitted. Not permitting it denies management its right to deal with continued unsatisfactory performance or its right to discipline employees.

With respect to subsection 7(2), AMO notes that, unlike subsection 7(1), this allowable exception is permitted only after pay equity has been implemented and that no reference is made to permit differences in compensation as a result of an arbitration process.

Once could reasonably conclude from the term "bargaining strength, that arbitration is not to be considered as a factor since arbitration, although part of the bargaining process, is in large part guided by factual information presented by a party and an arbitrator's interpretation of that information. As such, arbitration has little to do with the actual strength a party may possess or is able to exert. For this reason, specific reference to arbitration should be made.

Permitting a compensation difference on account of bargaining strength only "after" pay equity has been implemented assumes that females in bargaining units have been much weaker at their bargaining efforts prior to the implementation of pay equity and have, as a result, fallen prey to systemic discrimination. It assumes further that after pay equity, their bargaining strength has somehow positively changed simply by a change to their compensation.

Indeed, if differences on account of bargaining strength are acceptable after the implementation of pay equity procedures, then surely they must be acceptable before pay equity since such strength must have also been present at that time. In short, there appears to be no basis for a correlation between bargaining strength and systemic discrimination as the present wording of subsection 7(2) seems to suggest.

Achievement of Pay Equity

AMO Recommendation 6

That subsection 5(1) and other relevant sections of the Act be amended to replace the words "or comparable value" with "or nearly equal value".

Rationale:

Subsection 5(1) now reads:

> "For the purposes of this Act, pay equity is achieved when the job rate for the female job class that is the subject of the comparisoin is at least equal to the job rate for a male job class in the same establishment where the work performed in the two job classes is of equal or comparable value."

The Green Paper on Pay Equity makes clear that "equal" value is not to be interpreted narrowly to mean "exact" value, but rather to mean "similar" value. If this is to be the intent, use of the work "comparable" to reflect similarity may pose some interpretive problems.

If derived from the verb "to compare", "comparable" means "similar". However, as an adjective modifying "value", "comparable" means "that can be compared with" or "fit to be compared to".

Since, with job evaluation, all jobs "can be compared" regardless of similarity of their tasks and duties, all jobs are of comparable value to one another and thus stand in some proportion to one another.

For example, in a situation where one job is found to have a difference in value of 30% but where the difference in compensation between the two is 40% after discounting any allowable exceptions, use of the term "comparable value" could be interpreted as meaning that the rates of pay of the two jobs should be adjusted to reflect the 30% difference in value. Therefore, "comparable value" could come to mean "equal pay for work of proportional value" which is not the intent of the legislation. For this reason, AMO suggests that the term "comparable" be replaced with the term "nearly equal".

Pay Equity Plans

AMO Recommendation 7

That subsections 13(4) and 13(5) be amended and made similar to the provisions of 14(4) and 14(8) to provide for a review period after the mandatory posting date of the pay equity plan.

Rationale:

Subsection 13(4) and 13(5) now read:

(4) When an employer and a bargaining agent agree on a pay equity plan, they shall execute the agreement and, on or before the mandatory posting date, the employer shall post a copy of the plan in the work place.

(5) When a pay equity plan has been executed by an employer and a bargaining agent, the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

Subsections 14(4) and 14(8) now read:

(4) The employees to whom a pay equity plan required by this section or subsection 13(8) applies shall have until the ninetieth day after the mandatory posting date to review and submit comments to the employer on the plan.

(8) If no objection in respect of a pay equity plan is filed with the Commission under subsection (7), the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

The current provisions of subsections 13(4) and 13(5) require the execution of the plan once it has been agreed upon by the employer

and the bargaining agent. Such plans are "deemed" to have been approved by the Pay Equity Commission. The plan is also to be posted but, in light of the requirement that it must be executed after agreement between the parties, this posting serves little purpose other than to provide information to employees after the fact.

By contrast, the provisions of subsections 14(4) to 14(8), referring to plans for non-bargaining units, provide employees with a period of 19 days from the mandatory posting date in which to submit comments to the employer and 30 days from the posting date to file an objection with the Pay Equity Commission. In these latter subsections, the posting serves a greater purpose by providing employees with the opportunity to question any irregularities.

AMO suggests that the process should be the same for plans jointly developed by employers and bargaining units. A jointly developed plan is not guaranteed to be free from irregularities and employees should thus not be denied the right to question particular aspects of the plan that may have a direct impact on them simply because they are included in a bargaining unit.

The Right to Classify Jobs

AMO Recommendation 8

> **That a new section be added to the legislation stating that the negotiation of a pay equity plan shall not impinge upon the employer's right to classify or not classify jobs.**

Rationale:

The ability to classify or not classify jobs is generally held as a right afforded to the employer. Notwithstanding situations of bargaining where the employer may agree to share that right with a bargaining agent, it is normally the employer who decides on the relationships of jobs to one another outside bargaining situations. The relationships of jobs grouped by the employer to fit the nature of work could be altered outside bargaining by the pay equity legislation, and have the effect of eroding the employer's right to classify jobs - a right that is generally upheld in favour of the employer.

APPENDIX A

AN OVERVIEW OF BILL 154

Draft Pay Equity Legislation for
The Broader Public Sector and
The Private Sector

1. **Definitions** and to whom the Act applies

"establishment" - each municipality within a geographic division (e.g. if the City of Toronto operated a garage in East York, then the garage would be considered to be part of the City of Toronto)

2. **General Rules:**

a) WHICH CLASSES TO USE: - female job class = 60% predominance
- male job class = 70% predominance

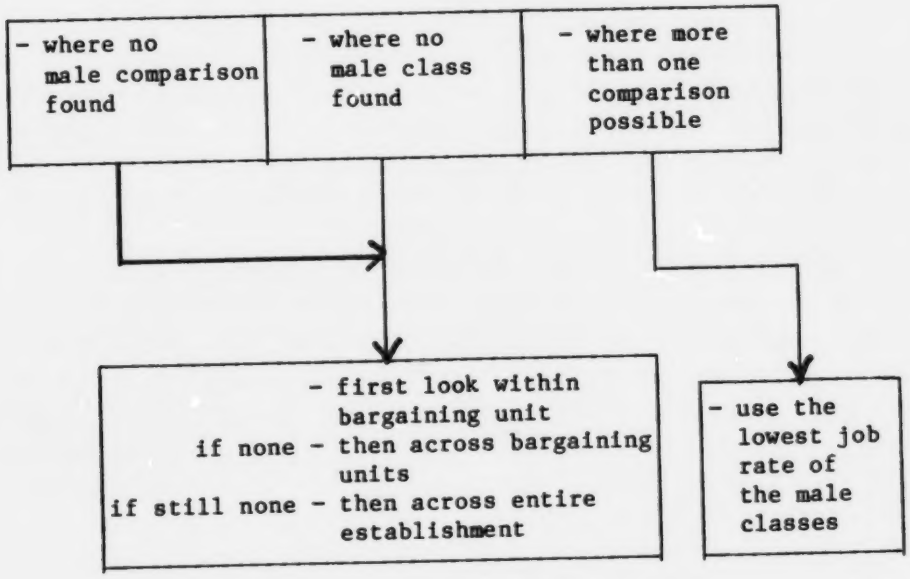
- in determining pre-dominance, regard shall be had to:

  - historical incumbency
  - gender stereotypes
  - other criteria considered to be relevant.

b) VALUE:
- a composite of skill, effort, responsibility and working conditions
- assessed using a "gender-neutral job comparison system"
- equal or "comparable" value

c) MAKING THE COMPARISONS:

- test female job class to male job class for equal or comparable value


- where no male comparison found
- where no male class found
- where more than one comparison possible
- first look within bargaining unit
if none - then across bargaining units
if still none - then across entire establishment
- use the lowest job rate of the male classes

d) EXCLUSIONS:

- seniority
- merit
- red-circling
- skills shortage
- casual employment

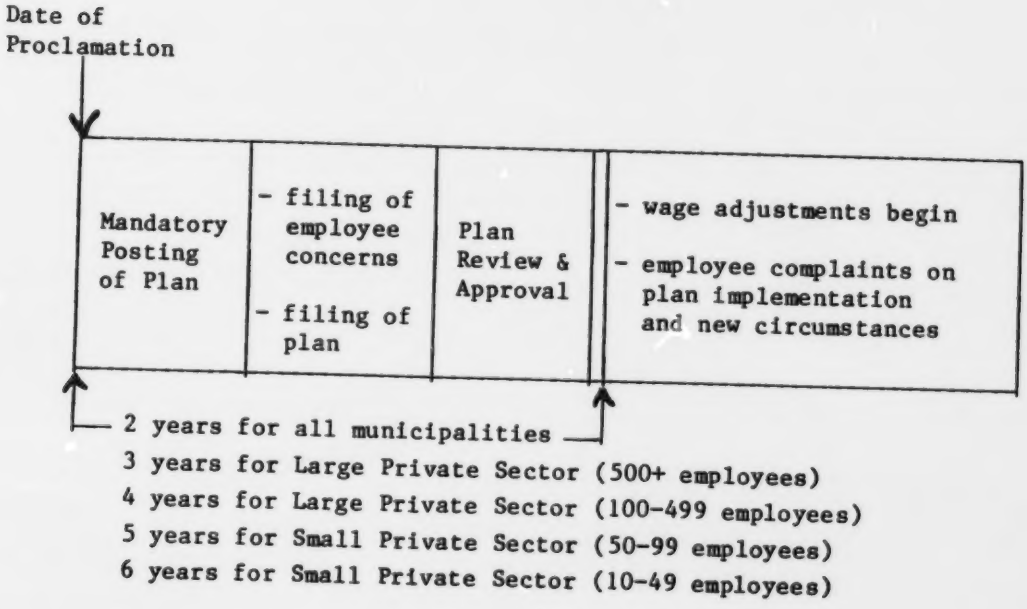
* - as a result of difference in bargaining strength

* only after pay equity has been established

e) OTHER RULES:

- cannot reduce compensation because of pay equity
- cannot bargain for anything that would controvene the establishment or maintenance of pay equity

4. Application to the Broader Public Sector and Private Sector Employers


Date of Proclamation
Mandatory Posting of Plan
- filing of employee concerns
- filing of plan
Plan Review & Approval
- wage adjustments begin
- employee complaints on plan implementation and new circumstances
2 years for all municipalities
3 years for Large Private Sector (500+ employees)
4 years for Large Private Sector (100-499 employees)
5 years for Small Private Sector (50-99 employees)
6 years for Small Private Sector (10-49 employees)

a) PLANS:

- to be negotiated (can be negotiated beyond minimum standards of Act)
- if successfully negotiated, plan deemed to be approved by Pay Equity Commission
- where no bargaining agent, plan must be approved by Pay Equity Commission
- where impasse reached in pay equity negotiations ... (see role of Pay Equity Commision)

b) ADJUSTMENTS:

- limited to 1% of total payroll per year (i.e., total of entire municipality)
- new rates to form part of collective agreement

5. **The Pay Equity Commission:**

a) ROLE:
- to deal with impasses in pay equity plan negotiations
- to deal with complaints with respect to pay equity plans
- to deal with new matters beyond pay equity plans

b) IMPASSES during pay equity plan negotiations:

- review officer assigned
- first attempts to mediate
- if mediation fails, imposes settlement on all outstanding matters

6. **Small Private Sector Firms** (less than 100 employees)

- not required to formulate pay equity plans
- required to make pay equity adjustments

APPENDIX B

AMO RECOMMENDATIONS TO THE CONSULTATION PANEL ON PAY EQUITY, 1986

1. AMO recommends that:

   for the municipal sector, "establishment" be defined as that which covers all jobs within the municipal corporation subject to differences in pay outcomes attributed to negotiated versus arbitrated settlements arising from differences in collective bargaining legislation.

2. AMO recommends that:

   in establishing acceptable levels of gender predominance to be used for pay equity provisions, the employer should set levels that are approved by the enforcement agency.

3. AMO recommends that:

   a. minimum standards for the determination of value be established for employers to apply with job evaluation, and

   b. in conjunction with these standards, guidelines for application be developed by the enforcement agency that specifically include:

      i. samples of acceptable job evaluation plans deemed to be gender-neutral and that span the known methods of job evaluation, and

      ii. samples of gender-neutral questionnaires that can be used for data collection in conjunction with the job evaluation plan.

4. AMO recommends that:

   "equal pay" be defined to include hourly earnings, benefits, pay for time not worked, non-wage factors and working conditions.

5. AMO recommends that:

the list of allowable exceptions justifying a compensation disparity should include:

a. performance rating systems
b. negotiated or arbitrated pay rates
c. seniority
d. red-circling
e. rehabilitation assignments
f. regional rates of pay
g. inflationary conditions
h. demotion pay procedures
i. working conditions
j. phased-in wage reductions
k. temporary training
l. premiums paid due to a labour shortage
m. change of work performed

6. AMO recommends that:

a. there be established a threshold of a minimum number of employees applicable to the municipal workforce such that,

   i. above the threshold the pay equity model would be an integrated model consisting of an employer-initiated pay-equity plan and a complaint system, and

   ii. below the threshold the pay equity model would be limited to a complaint system,

and that,

b. the government consult with AMO on the actual size of the threshold to be used.

c. pay-equity legislation should not preclude the possibility of requiring the parties to negotiate pay-equity plans and these plans should be negotiated separately from other matters affecting the collective agreement. However, in the event of an impasse during such negotiations, AMO recommends recourse to a non-binding form of third-party intervention and specifically recommends against the use of any <u>binding</u> form of third party resolution.

d. jobs grouped according to female-predominance and male-predominance be done so only for the purposes of pay equity provisions.

7. AMO recommends that:

a. under both the pay equity plan provisions and the complaint provisions, the employer not be required to commit more than 1% of the previous year's payroll applicable to the bargaining unit or non-bargaining unit as the case may be for pay equity adjustments.

b. where jobs, whose costs are shared with the provincial government in accordance with a provincial-municipal program funding ratio are covered by a pay equity plan, all pay equity costs associated with those jobs should be shared with the provincial government using the same ratio, and municipal transfer payments should be increased in accordance with the provincial government's share of the pay-equity cost liability.

8. AMO recommends that:

the existing knowledge and expertise of the Employment Standards Branch serve as the enforcement agency.

9. AMO recommends that:

With respect to carrying out its enforcement function and the issuing of orders where complaints are lodged, AMO recommends that:

a. the agency be given the latitude to mediate disputes between the complainant and respondent before it issues an award.

b. there be a fixed time period on the order of six (6) months from the time the complaint is lodged to the time an order is issued.

c. orders issued by the enforcement agency be made effective on the date the order is issued.

d. in making adjustments to wages as part of implementing the enforcement agency's order, an employer be permitted to maintain the option of moderating the wage increases of jobs deemed to be overpaid.

e. employers be permitted to appeal the timing or phasing-in of an order on the basis of being unable to accommodate the time-frame for the implementation of the order.

f. individuals or groups of individuals, without giving regard to gender, be permitted to lodge complaints.

10. AMO recommends that:

the period between proclamation of the legislation and the date pay equity plans are to be first developed or a complaint may first be lodged, as the case may be, be a minimum of one year.

11. AMO recommends that:

legislation for pay equity supercede all existing and future collective bargaining legislation.

ADDENDUM TO
RECOMMENDATIONS FOR AMENDMENTS TO
BILL 154

On March 9, 1987, the Association of Municipalities of Ontario (AMO) presented a set of preliminary recommendations on amendments to Bill 154 to the Standing Committee on the Administration of Justice. One of the recommendations presented dealt with clarifying the definition of "establishment" suggested to read as follows:

> **"That Part (b) of the Schedule accompanying the legislation and affecting the definition of 'establishment' make clear that any authority, board, agency, or commission in a municipality that is separately incorporated or is designated as a separate entity under any Act of Acts shall be deemed to be a separate establishment."**

The rationale presented for requiring the definition to be clarified in this manner was as follows:

> **"It is unclear from Part (b) of the Schedule as to whether authorities, boards, commissions or agencies are to be regarded as separate establishments. Indeed, there are a myriad of situations in municipalities whereby some authorities, boards, agencies and commissions are regarded as part of the municipality's workforce; others needs receive only budgetray approval and still others are completely devlod of any municipal authority. In the latter two situations, the municipal corporation exercises no authority with respect to labour relations or the personnel function of the authority, board, agency or commission. As such, it would be inappropriate to regard these groups as part of the municipal establishment responsible for pay equity."**

As a result, the Standing Committee requested from AMO a list of authorities, boards, agencies and commissions and whether each would or would not be considered as part of the municipal corporation's establishment for the purpose of pay equity. This addendum to AMO's recommendations sets out that list and outlines the criteria used in determination.

Groupings:

As there are a vast number of authorities, boards, agencies and commissions in the municipal sector, each has been grouped according to function. The functional groups examined were:

a) planning boards
b) children's aid societies
c) police commissions
d) library boards
e) suburban roads commissions
f) transit commissions
g) non-hydro public utilities commissions
h) hydro-electric commissions
i) housing authorities
j) municipal non-profit housing
k) recreation commissions
l) arena boards
m) parks boards
n) industrial commissions/economic development/development corporation
o) municipal hospital boards
p) boards of health
q) conservation authorities
r) municipal cemetery boards
s) boards of education
t) parking authorities
u) airport commissions
v) business improvement area boards
w) family and children services boards/welfare administration
x) municipal art gallery boards
y) municipal museum boards
z) district health councils

Criteria:

The rationale AMO set out articulated situations where the municipality exercises a high degree of direct control over the authority, board, agency or commission. If this is so, then it can reasonably be held that the group is part of the municipal establishment.

As a conseqence, in order to be part of the municipal establishment, AMO is of the opinion that:

1) budgetary approval is required exclusively from the municipal council and/or the municipality provides a majority of the funding.

2) there must be direct accountability to the municipal council such that it can reasonably be that the operations of the group are controlled by the municipality as an employer, and,

3) the authority, board, agency or commission:

   (i) is not mandatory under a provincial statute and its structure and responsibilities are not governed by the terms of that statute, or,

   (ii) is mandatory under a provincial statute but is accountable to the municipal council.

Where there is joint municipal control, AMO is of the opinion that the same criteria must apply and the costs associated with pay equity should be allocated amongst the municipalities in the same proportion that each is exercising control.

The accompanying table summarizes whether the group fits the criteria and, as a result, whether it should or should not be considered as part of the municipal corporation's establishment for purposes of pay equity.

Those considered to be part of the municipal corporation's establishment are:

a) planning boards
d) library boards
e) suburban roads commissions
f) transit commissions
g) non-hydro public utilities commissions
j) municipal non-profit housing
k) recreation commissions
l) arena boards
m) parks boards
n) industrial commissions/economic development/development corporation
p) boards of health
r) municipal cemetery boards
t) parking authorities
x) municipal art gallery boards
y) municipal museum boards

Those not considered to be part of the municipal corporation's establishment are:

b) children's aid societies
c) police commissions
h) hydro-electric commissions

i) housing authorities
o) municipal hospital boards
q) conservation authorities
s) boards of education
u) airport commissions
v) business improvement area boards
w) family and children services boards/welfare administration
z) district health councils

Gray Areas:

For some boards, agencies, authorities and commissions, it is not as easy to determine whether they should or should not be part of the municipal establishment. While the criteria outlined may suggest one action, in practice the administration of these suggests the opposite. For this reason, the list below may be regarded as "gray" areas:

d) library boards
f) transit commissions
j) municipal non-profit housing
p) boards of health

Local conditions are certainly a cause that may cause a variance. To ensure that local conditions are taken into consideration AMO additionally recommends that:

> **The legislation establish a mechanism permitting a municipal corporation to appeal the inclusion or exclusion of an authority, board, agency or commission with the onus of proof for the inclusion or exclusion, as the case may be, resting with the municipal corporation.**

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